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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,987	06/23/2000	Richard E. Fulton	3663-5	9195

22442 7590 06/02/2003

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/599,987

Applicant(s)

FULTON, RICHARD E.

Examiner

Jamisue A. Webb

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 20-30, 41 and 42.

Claim(s) withdrawn from consideration: 1-14, 16, 17, 19, 31-40 and 43-55.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 2. NOTE: The applicant has substantially amended the claims to more clearly define the invention, however has also added the limitation that the catheter rotates at "30 rpm to 600 rpm" This is a new limitation therefore it would require further search and consideration..

Continuation of 5. does NOT place the application in condition for allowance because: The applicant has made a statement that Auth does not cannot e relied upon as an anticipatory reference in view of the amended claims, as stated above the amendment is not being entered, therefore this argument is moot and the 102 rejection stands. The applicant is also anticipating a 103 rejection based on Auth, indicating the low rotation speeds would teach away from the Auth reference, due to the fact that the amendment is not being entered, and a 103 obvious rejection was never made, then this argument is moot also, and the rejection stands.

With regards to applicant's request that the finality of the case be withdrawn: The applicant is stating that according to MPEP 706.7 the final was premature and therefore should be withdrawn. The applicant states that they have shown proof that the 102 rejection has been overcome and the finality of the rejection should be withdrawn in order to allow the applicant to properly argue any obviousness rejections. The applicant also states that MPEP 706.7(e) explicitly provides that it is permissible to withdraw a final rejection in situations where a new reference is relied upon to reject claims. The MPEP 706.7(a) states that a final rejection is proper on second action when an examiner introduces a new ground of rejection that is necessitated by the amendment. The applicant substantially amended the claims, which caused the examiner to have to apply a new reference to the claims, therefore the new ground of rejection was necessitated by an amendment and the final was in fact proper and was not premature. MPEP 706.7(c) deals with final rejections which are premature, as explained above the final was not premature, therefore 706.07 (c) is not relevant. MPEP 706.07(e) states that once a final rejection that is not premature has been entered in an application proceeding, it should not be withdrawn at the applicant's or patent owner's request except on a showing under 37 CFR 1.116(b). It further goes on to say an amendment that will place the the case in condition for allowance or in better form for appeal may be admitted, however as stated above, the applicant has added a new limitation into the independent claim, which was not previously indicated allowable, and has never been considered before. Therefore would require a further search and examination in order to determine the allowability of the subject matter. And where as the amendment may read over the prior art of record and the rejection of record, it still has not been searched to see if it is allowable. Therefore the amendment is not being entered. This section in the case states if new facts or reasons are presented such as to convince the examiner that the previously rejected claims are in fact allowable or patentable in the case, then the final rejection should be withdrawn, however applicant is only arguing the rejection as if the amendment to the claims are being entered, and has not provided evidence that the claims "previously rejected" are allowable, or how the rejection that was "previously" made on the claims, is improper, therefore the applicant has not provided evidence that the previously rejected claims are allowable or patentable. Therefore the finality of the rejection is deemed proper and the amendment is not being entered and the rejections stand as stated in the final office action.